

Application No. 10/004,061
Election and Request for Reconsideration dated March 9, 2004
Reply to Office Action of February 10, 2004

REMARKS / ARGUMENTS

The Examiner is thanked for the Office Action of February 10, 2004. This Election and Request for Reconsideration is fully responsive thereto. In response to the modified requirement for restriction, Applicant provisionally elects, with traverse, Group I (claims 1-61).

RESTRICTION REQUIREMENT

In the February 10, 2004 Office Action, the Examiner withdrew the restriction of September 12, 2003, but required a new restriction with respect to three Groups: Group I (claims 1-61) drawn to a heat transfer fluid mixture; Group II (claims 62-66) drawn to methods of using a heat transfer fluid mixture, and Group III (claims 67-76) drawn to a method of making a heat transfer fluid mixture. The Examiner also requires Applicant to elect one of two sub-Groups II-A and II-B if Applicant elects Group II. Applicant provisionally elects Group I (claims 1-61). However, Applicant respectfully asserts that the Examiner improperly required the restriction and should therefore withdraw the same and examine all of the claims.

In order to properly require restriction between a product (Group I) and a process of making a product (Group III), pursuant to US PTO restriction practice, the Examiner must show that the two are distinct by either showing: a) that the process is not an obvious process of making the product and the process as can be used to make other and different products; or b) that the product can be made by another and materially different process. In this case, the Examiner has not

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made such a showing. To the extent that the Examiner addresses this issue, the Examiner indicated that the process of making does not require the molecular weight relationship described in claim 1. However, this is not a sufficient distinctness showing according to US PTO practice. As such, Applicant respectfully requests that the Examiner withdraw the restriction requirement.

Also, Applicants respectfully assert that the Examiner has failed to show that Group II is distinct from either Group I or Group III. According to US PTO practice, in a three-way restriction between product made (such as Group I), process of making (Group III), and process of using (Group II), the Examiner must not only show that the product made and the process of making are distinct, but also that the process of using is also distinct from the product made and the process of making. In this case, this showing is absent in the Office Action. To the extent that the Examiner addresses this issue, the Examiner indicated that the three Groups are separately classified and that the search for Group I is not required for the search of Group II or Group III. However, this is not a sufficient distinctness showing under US PTO practice. Thus, Applicant respectfully requests that the Examiner withdraw the restriction requirement.

Finally, Applicant notes that claim 74 does require the molecular weight relationship of claim 1, and thus should be examined along with the product claims of Group I.

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CONCLUSION

For the reasons explained above, Applicant believes that the restriction requirement was improperly made and should be withdrawn. Applicant respectfully requests examination of all the claims.

Should the Examiner believe that a telephone call would expedite prosecution of the application, she is invited to call the undersigned attorney at the number listed below. It is believed that no fee is due at this time. If that belief is incorrect, please debit deposit account number 01-1375. Also the Commissioner is authorized to credit any overpayment to Deposit Account No. 01-1375.

Respectfully submitted,



Christopher J. Cronin
Registration No. 46,513

Date: February 9, 2004
Air Liquide
5230 S. East Ave.
Countryside, IL 60513
(708) 579-7925 Phone
(708) 579-7801 Fax

CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8(a)

I hereby certify that this correspondence is being transmitted via facsimile to telephone number 703-872-9306 on this 9th day of March, 2004.



Christopher J. Cronin
Registration Number 46,513